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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of)

Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)

MB Docket No. 02-145

COMMENTS OF SOUTH DAKOTA NETWORK, LLC

The South Dakota Network, LLC ("SDN"), by its attorneys, hereby comments in response to the Commission's captioned *Notice of Inquiry*.¹ SDN desires to bring to the Commission's attention certain video programming conditions that are preventing, or otherwise hindering, the development and efficient use of DSL transmission and delivery technologies to bring quality video programming to consumers living in rural communities.

SDN

SDN is a South Dakota limited liability corporation comprised of thirty members, all of which are South Dakota independent telephone companies. Since 1992, it has provided centralized equal access service on behalf of its independent telephone company members. It also provides SS7 signaling services, private line circuits, frame relay and asynchronous transmission mode ("ATM") services, and Internet access services.

In November of 2001, SDN adopted a plan to construct a common headend in Sioux Falls, South Dakota, to serve the numerous small cable television systems operated by many of its members. Construction of the common headend was completed in June of this year. During the next two and one-half years, the SDN common headend will be connected via existing and

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 02-145 (FCC 02-178)(rel. June 14, 2002).

new fiber optic lines to individual cable systems owned and operated by SDN's members. When the project is completed, the SDN common headend will furnish programming to member cable systems serving approximately 10,000 cable television subscribers in approximately 50 rural communities.

It was hoped that the SDN common headend will enable its member cable system operators and their rural subscribers to enjoy increased programming options at reduced rates (due to volume discounts and increased administrative efficiencies). To utilize SDN's cost effective and efficient video transmission delivery system, SDN must be able to convert the signals it receives at its Sioux Falls headend to digital signals for delivery over its fiber optic network to the numerous small cable television systems operated by its members. Unfortunately, certain programmers are making it very difficult, if not impossible, for SDN to use the programmer's video signal over SDN's fiber optic system.

For example, SDN has encountered a great deal of difficulty obtaining the programming of one prominent satellite program network without onerous conditions or surcharges. SDN and several of its members have been diligently trying to negotiate and obtain a transport and distribution agreement with the satellite network for several months. During the initial stage of the discussions, SDN was informed by the satellite network that its popular established program channel would be made available to an all-digital system like SDN only if two of the satellite network's less attractive program channels were also carried. To the best of SDN's knowledge, the satellite network does not demand that analog cable delivery systems carry the two additional channels as a condition of receiving the popular channel.

In addition, the satellite network demanded that its three channels be placed in specific locations on SDN's members cable channel lineups. The popular channel had to be under channel 30, and the other two channels had to be adjacent to each other and under channel 45.

Recently, the satellite network has backed off its demand that SDN purchase of all three of its channels, and instead has offered to furnish its popular channel to SDN at its standard rate (i.e., the rate currently paid by many SDN members for the channel), plus a surcharge of \$0.25 per subscriber. Thus, just because SDN and its members have chosen to utilize its fiber optic system to deliver programming to rural communities, the satellite network has taken the position that SDN's members should pay a \$0.25 per subscriber penalty to deliver the popular channel. This represents a 73.5% increase over the price paid by analog South Dakota cable operators for the channel.

The surcharge is not technology neutral and serves only to undermine the ability of new entrants to deliver quality video programming by state-of-the-art transmission facilities. The surcharge also distorts the competitive video marketplace. Competitors utilizing older analog video transmission systems in the SDN service area will not have to pay the surcharge penalty for delivery of the channel. If this practice is not stopped now, SDN believes that other satellite networks may try to take advantage of small digital cable systems and similar digital delivery platforms by imposing the same types of surcharges on them. This would reduce innovation and the impair the ability of new entrants to plan and construct digital transmission systems that can deliver quality, lower cost programming to rural communities.

The second example of what appears to be discriminatory and anticompetitive activities concerns a satellite shopping network. That shopping network has recently informed SDN that it will not sign contracts with DSL distributors, but will instead permit carriage of its channel at no

charge without a contract. Because contracts are required for a cable operator to receive commissions when its subscribers purchase merchandise on the shopping network, this "policy change" effectively eliminates home shopping commissions for digital cable providers and reduces their revenues vis-à-vis their analog counterparts.

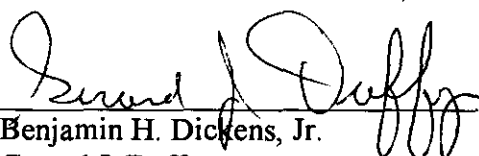
The shopping network appears to be taking a position that just because SDN's members have chosen to utilize its fiber optic system to deliver programming to rural communities, SDN's members should now have to pay a per subscriber penalty, in the form of foregone commissions, to deliver its channel. Here again, the penalty is not technology neutral and serves only to undermine the ability of new entrants to deliver quality video programming by state-of-the-art transmission facilities.

Section 628 of the Communications Act² was designed to promote the public interest by increasing competition and diversity in the multichannel video programming market, by increasing the availability of programming to persons in rural areas, and to spur development of communications technologies. Accordingly, Congress directed that the Commission promulgate regulations to prohibit activities by video programming vendors from discriminating against video distributors such as SDN and its members because they have decided to deliver video programming in digital as opposed to analog form, through the use of its fiber optics network.

² 47 U.S.C. § 548.

SDN believes that the actions taken by the satellite network and the shopping network are discriminatory and anticompetitive, and are accordingly in contravention of the goals of Section 628. These actions serve to prevent, or otherwise hinder development and efficient use of digital transmission and delivery technologies to bring quality video programming to consumers living in rural communities.

Respectfully submitted,
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